

Appeal No: VA21/4/0105

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

The Clontarf Assembly Rooms Ltd

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In relation to the valuation of

Property No: 5024960, Swimming Baths at The Baths 123a Clontarf Road, Clontarf, County Dublin.

B E F O R E

Majella Twomey - BL

Deputy Chairperson

Frank O'Grady - MA, FSCSI, FRICS

Member

Allen Morgan - FSCSI, FRICS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 18TH DAY OF SEPTEMBER, 2023

1. THE APPEAL

1.1 By Notice of Appeal received on the 3rd day of December, 2021 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ‘(the NAV’) of the above relevant Property was fixed in the sum of €25,400.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 28(4) of the Act because: *“Property Concerned ought to have been excluded in relevant Valuation List.*

The subject property is an outdoor seawater swimming baths developed for sporting purposes. Section 15. (2) of the Valuation Act states that Subject to sections 16 and 59,

relevant property referred to in Schedule 4 shall not be rateable. Schedule 4 part 4 of the Act specifies that lands developed for sport shall be relevant property non-rateable.”

- 1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

2. VALUATION HISTORY

- 2.1 On the 29th day of March, 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 (“the Act”) in relation to the Property was sent to the Appellant indicating a valuation of €157,000.

- 2.2 Being dissatisfied with the valuation proposed, representations were made to the valuation manager in relation to the valuation. Following consideration of those representations, the valuation of the Property was reduced to €25,400.

- 2.3 A Final Valuation Certificate issued on the 11th day of November, 2021 stating a valuation of €25,400.

3. THE HEARING

- 3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 14th day of June, 2023. At the hearing the Appellant was represented by Mr. Donal O’Donoghue B.Sc. (Hons) Estate Mgmt., Dip Vals, MSCSI, MRICS of OMK Property Advisors & Rating Consultants and the Respondent was represented by Ms. Claire Callan of the Valuation Office along with Stephen Walsh BL.

- 3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

4.1 From the evidence adduced by the parties, the Tribunal finds the following facts.

4.2 The swimming pool forms part of a larger facility all of which is owned the Cullen family and which comprises a commercial café and restaurant. The swimming pool and restaurant were substantially re-developed in or around 2017/2018.

4.3 The swimming pool is currently leased to Clontarf Outdoor Pool Limited on foot of a lease dating from 2020. The annual rent payable under the lease is €10.

4.4 The swimming pool is located on a tidal coast. At high tide, water is collected in the pool. The water is retained as the tide recedes, thereby permitting swimming at low tide.

4.5 The swimming pool is open to members of the Clontarf Aquatic Masters Club at particular times. The members pay an annual subscription of €100.

5. ISSUES

5.1 The core issue in this appeal is whether the subject property, an open-air seawater swimming facility in Clontarf, Dublin 3 falls within Schedule 4 of the Valuation Act 2001 such as to qualify as relevant property which is not rateable.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.

6.2 Paragraph 4 of Schedule 4 to the Act identifies “Land developed for sport” as being relevant property which is not rateable.

6.3 The term “*land developed for sport*” is defined in Section 3 of the Act as meaning:
“*outdoor surfaces used for sporting purposes (including football pitches, tennis courts, race courses and golf courses, but not including fixed buildings and structures).*”

7. APPELLANT’S CASE

7.1 Mr O Donoghue gave evidence on the behalf of the Appellant. He said that the subject property was part of a bigger property, which has a restaurant/cafe. However, the properties are subdivided.

7.2 Mr O Donoghue said that the subject property consisted of seawater baths in a suburban location. Mr O Donoghue said that the Cullen family had purchased both the restaurant and the baths in 1996. However, at the purchase date, the baths were unsafe for use. Following extensive investment and work, the baths finally re-opened in 2018. The evidence was that Clontarf Assembly Rooms LTD is the occupier and the subject property is let to Clontarf Outdoor Pool LTD on a lease for 10 years.

7.3 Mr O Donoghue said that he was of the view that the pool is land developed for sport and therefore should not be rateable. He said that the restaurant and café are ancillary to the pool.

7.4 Mr O Donoghue said that the pool is open from May to October each year. He said that there is a membership fee of €100 per annum. He confirmed that there is no connection between the landlord and tenant.

7.5 Mr O Donoghue said that the pool is leased to Clontarf Outdoor Pool LTD, which is a not-for-profit organisation run by a Mr Bobby Nolan who is well known in swimming circles. Mr Nolan runs the company on a voluntary basis. Mr O Donoghue said that swim clubs have great difficulty getting insurance and Mr Nolan set the company up in order to get insurance. It is a private company limited by shares.

7.6 Mr O Donoghue said that the pool is used by Clontarf Aquatics Masters Club for training session and there is an open period during the summer whereby the public can book in advance. The Tenant is obliged to look after the pool.

7.7 On cross examination, Mr O Donoghue said that lease began in July 2020. He said that the development of the pool concluded in 2018, and he confirmed that the overall development cost €2,400,000 with €1,000,000 of that attributed to the pool. Mr Walsh BL asked Mr O Donoghue if he was saying that two years after the investment that the best rent achievable was €10 per year. Mr O Donoghue said that this was the case and he accepted that it was a poor investment.

7.8 Mr O Donoghue was asked what the connection between Mr Nolan and the Cullen family is and he said that Mr Nolan knew one of the Cullens, but Mr O Donoghue did not know of any of the pre-development talks between the parties.

7.9 It was put to Mr O Donoghue that a member of the public could book the pool at certain times and Mr O Donoghue did not dispute that. It was put to him that the hypothetical tenant could charge whatever they wanted to charge. He replied that this may well be the case.

7.10 It was put to Mr O Donoghue that the characteristics of the Tenant has distorted the rent and he replied that the actual tenant was the best way to gauge the rent. He said that Mr Nolan is the best placed person to understand the market. The Appellant was asked if Mr Nolan was in the project for the love of swimming and he said that this was the case. Mr O Donoghue was asked if a private person could charge more if they occupied the pool and he said 'yes'.

7.11 Mr O Donoghue was asked if there was permanent lining on the pool and he said that last summer Mr Nolan organised to have that put in. He said that a lot of money had been spent prior to re-development on reinforcing walls around the pool. He was asked if the walls were fixed and he said they were, but he said that tennis courts and golf courses, for example, are not rated. It was put to Mr O Donoghue that a swimming pool is a fixed structure and he said that he disagreed. He said that he believed it was land developed for sport.

7.12 Mr O Donoghue was asked about the costs associated with the pool and he referred to lifeguards, chlorine, cleaning, showers. He was asked about cost recovery, and he said it was minimal and that no profit was being made.

7.13 No comparators were put forward by the Appellant.

8. RESPONDENT'S CASE

8.1 Ms Callan appeared for the Valuation Office, and she said that the pool was rateable under schedule 3. She said that the origin of the baths goes back to 1800s. She said that they are now open to the public and people are charged €10 for a two-hour slot. She said that the floor areas are agreed.

8.2 The tenant is Clontarf Outdoor Pool Ltd.

8.3 The Respondent put forward a number of tone of the list comparators, rated at €40 per m.sq.

8.4 Comparator 1 is Oscar Traynor, which was set out at page 30 of the Respondent's precis. It is open to the public and is rated at €40 per m.sq.

8.5 Comparator 2 is a Dublin City Council pool on Sean McDermott Street, also rated at €40 per m.sq. Comparator 3 is another public pool run by Dublin City Council on Windmill Road and is rated at €40 per m.sq. Comparator 4 is BM Swimming on Mespil Road, which is a public, pay as you go, pool and is rated at €40 per m.sq.

8.6 Ms Callan also introduced Comparator 5 which is Westwood Gym. It is a large, superior, private pool and is part of Westwood gym. That pool is rated at €75 per m.sq. The final comparator was Comparator 6 which is Buncloody outdoor pool rated at €35 per m.sq. This pool is situate in Wexford, outside the rating area.

8.7 Ms Callan said she was not aware of any exempted pools.

8.8 In cross examination Mr O Donoghue asked Ms Callan if all the comparator pools were open to the public and she confirmed they were apart from Westwood. Mr O Donoghue asked if the Valuation Office rated changing rooms and she said that they are dealt with under a different schedule which deals with clubhouses.

8.9 Mr O Donoghue suggested that most golf clubs are not rated, and he asked if the dressing rooms were rated and Ms Callan said '*if it is fee paying the clubhouse is rateable*'.

8.10 It was put to Ms Callan that the subject property was only open for half of the year and she said 'yes'.

8.11 Mr. O Donoghue asked how the Respondent arrived at a value of €25 per m.sq for the subject property and she said that she looked at the pool in comparison to pools with facilities. She said that the better the facilities, the higher the rate applied. She said that pools are generally rated at €40 per m.sq. She said that when she saw the pool she realised it did not have the same ability to trade as other pools as it is an outdoor pool and not open all year and therefore she found that €25 per m.sq was a fair rate.

8.12 Mr O Donoghue asked if all the comparators were covered, heated pools, which were run for a profit and Ms Callan said they were.

8.13 Ms Callan was asked what the valuation date for the Bunclody pool was and she said it was September 2017.

8.14 On re-examination, Ms Callan was asked if the subject property could be opened for 12 months of the year if an occupier wished to do so and she said it could.

9. SUBMISSIONS

9.1 The Applicant did not make any legal submissions.

9.2 The Respondent made oral and written submissions. It was submitted that the disputed Subject Property does not constitute relevant property within the meaning of Schedule 3 of the Act.

9.3 It was submitted that the burden rests on the Appellant to demonstrate that paragraph 4 of Schedule 4 “*clearly and without doubt and in express terms*” exempts the Subject Property from rateability. Mr Walsh BL stated that the Appellant must demonstrate that the swimming pool is not a fixed structure. It was submitted that the Appellant has not discharged that burden (and that in any event, wherever the burden of proof lies, the Property falls outside paragraph 4 of Schedule 4).

9.4 It was submitted that the Appellant has not established, still less established clearly and without doubt, that the Subject Property is an outdoor surface used for sporting purposes.

9.5 It was submitted that the net annual value of the Property has been determined in a fair and equitable manner, consistent with the tone of the valuation list. The NAV per m.sq is lower than all six comparators chosen. It was submitted that the fact that the property is leased at an annual rent of €10 is a red herring. It was submitted that the evidence in the precis was that the lessee receives an annual subscription of €100 from each member, €40 of which is remitted to Swim Ireland, which includes an insurance contribution of €11. Thus, the operator receives €60 net from each member, which is six times the passing rent under the lease.

9.6 It was submitted that the fact that the chosen lessee is a not-for-profit organisation does not affect the exercise of determining the Subject Property's net annual value.

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of Dublin County Council.

10.2 Paragraph 4 of Schedule 4 to the Act identifies "*Land developed for sport*" as being relevant property which is not rateable.

10.3 The term "*land developed for sport*" is defined in Section 3 of the Act as meaning: "*outdoor surfaces used for sporting purposes (including football pitches, tennis courts, race courses and golf courses, but not including fixed buildings and structures).*"

10.4 The Tribunal notes that the definition of land developed for sport does not expressly refer to swimming pools, albeit that does not necessarily mean the swimming pools do not fall within the exemption. However, the Tribunal notes that the Respondent provided a list of swimming pools as one of the list comparators which are all rated and to which exemptions have not been applied.

10.5 Furthermore, the Tribunal notes that the exemption does not include fixed buildings and structures. In other words, fixed buildings and structures are included and must be rated.

The Tribunal notes that no case-law on the subject of ‘fixed structures’ was put before it. The Tribunal asked the parties if they were aware of any case-law relating to the situation pertaining to rating of swimming pools and they said they were not.

10.6 The Respondent’s representative gave evidence that the pool has been in existence since 1800. It has walls which were recently reinforced and strengthened. While it is not a building per se, it is a pool which has been in existence for over 120 years. It has remained unchanged during that period of time and there was no evidence to suggest that the pool was closed up. While the Appellant gave evidence that it was comparable to a golf course or a tennis court situation, the Tribunal finds that golf courses are not fixed buildings or structures, rather they are courses on plots of land which have been developed for the use of playing golf. The boundaries of a golf course could be moved, for example or such a course could be extended. The same logic applies to tennis courts. A tennis court is a flat surface with various lines which define boundaries, with a net in the middle of the court. This cannot not be said to be a fixed structure. Conversely, a swimming pool could be described as a fixed immovable structure with four reinforced concrete walls, which cannot be moved. While the Appellant made a number of bald assertions that a swimming pool is not a fixed structure, he was unable to provide any case law or comparators to illustrate this point to the Tribunal. The Respondent, however supplied a number of different comparators which showed that various pools in the rating area and outside had been rated and, therefore, were classed as not falling within the exemption.

10.7 The Tribunal finds that it is for the Appellant to make the case. The Appellant in this case was unable to put forward any clear evidence to counter the argument that the subject matter is a fixed structure and therefore not exempt. In all the circumstances, having weighed and evaluated all the evidence before it, the Tribunal finds that the subject property is a fixed structure and, therefore does not fall within the exemption.

10.8 Without prejudice to the above, in relation to quantum, the Appellant’s representative said that the rate applied was excessive. However, once again he failed to produce any comparators to suggest why this was the case.

10.9 Conversely, the Respondent produced six different comparators, five of which related to public pools and one which was private. All the public pools were valued at €40 per m.sq. One of the pools was outside the rating area in Bunclody, but was submitted to show that

an outdoor pool in the country was rated at €35 per m.sq. The Appellant said that the subject property was unique in that it was only open for half the year, it is outdoor and unheated. The Respondent's representative accepted this and said that these factors had been taken into consideration in coming up with the figure of €25 per m.sq. The Respondent's representative said that the pool was unique, but it could be opened for longer if the operator wished to open it. She also said that it is open to the public and one can book tickets online.

10.10 The Tribunal, having assessed the circumstances, finds that the Respondent put forward clear and coherent reasons for arriving at the NAV to €25 per m.sq. She explained that the Subject Property is a unique pool, unheated and outdoors. She also submitted a number of clear comparators which assisted the Tribunal. Unfortunately, the Appellant failed to submit any such evidence and there were no comparators before the Tribunal to illustrate that the figure as set by the Respondent was unfair or unequitable.

10.11 In the circumstances the Tribunal upholds the NAV of €25 per m.sq.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal disallows the appeal and confirms the valuation of the property as stated in the valuation certificate as €25,400.